

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
UACC Midwest, Inc. d/b/a United Artists)
Cable Mississippi Gulf Coast;)
)
Telecable Associates, Incorporated;)
)
Vicksburg Video;)
)
Mississippi Cablevision, Inc.; and)
)
Mississippi Cable Television Association,)
)
Complainants)
)
v.)
)
South Central Bell Telephone Company,)
)
Respondent)
)

CC DOCKET NO. 95-94

DOCKET FILE COPY ORIGINAL

PA 91-0005 through
PA 91-0009

TO: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

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July 31, 1995

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)	
Respondent)	
)	

TO: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

Complainants UACC Midwest Inc. d/b/a United Artists Cable Mississippi Gulf Coast, Telecable Associates, Incorporated, Vicksburg Video, Mississippi Cablevision and Mississippi Cable Television Association hereby oppose Bell South's Application for Review filed July 17, 1995.

Bell South's Application for Review basically raises three issues, none of which warrants review.

First, Bell South contends that the entire regime of pole regulation should be disbanded. The pole is the point of interconnection between the cable industry and the telephone industry. Regulators have long regarded utility poles and conduits as essential facilities, access to which is essential for promoting the deployment of cable systems and of competing services.¹ This is a view which is shared by Congress,² federal district and circuit courts,³ the Department of Justice,⁴ and the U.S. Supreme Court.⁵ It is no wonder that the

¹ See, e.g., Twixtel Technologies, Letter from FCC Common Carrier Bureau, July 6, 1990 at 4 (basis of telco-cable crossownership rule is "the Commission's traditional concerns with carrier denial of access to essential poles and conduit"); Section 214 Certificates, 21 F.C.C.2d 307, 323-29 (1970) (CATV systems "have to rely on the telephone companies for either construction and lease of channel facilities or for the use of poles for the construction of their own facilities." Telco has monopoly and "effective control of the pole lines (or conduit space) required for the construction and operation of CATV systems."); General Tel. Co. of California, 13 F.C.C.2d 448, 463 (1968) (by control over poles, Telco is in a position to preclude an unaffiliated CATV system from commencing service)

² See, e.g., 123 Cong. Rec. 35006 (1977) (remarks of Rep. Wirth, sponsor of Pole Attachment Law) ("The cable television industry has traditionally relied on telephone and power companies to provide space on poles for the attachment of CATV cables. Primarily because of environmental concerns, local governments have prohibited cable operators from constructing their own poles. Accordingly, cable operators are virtually dependent on the telephone and power companies. . . ."); 123 Cong. Rec. 16697 (1977) (remarks of Rep. Wirth) ("Cable television operators are generally prohibited by local governments from constructing their own poles to bring cable service to consumers. This means they must rely on the excess space on poles owned by the power and telephone utilities."); S. Rep. No. 580, 95th Cong., 1st Sess. 13 (1977) ("Owing to a variety of factors, including environmental or zoning restrictions and the costs of erecting separate CATV poles or entrenching CATV cables underground, there is often no practical alternative to a CATV system operator except to utilize available space on existing poles."); H.R. Rep. No. 721 95th Cong., 1st Sess. 2 (1977) ("Use is made of existing poles rather than newly placed poles due to the reluctance of most communities, based on environmental considerations, to allow an additional duplicate set of poles to be placed.").

³ See, e.g., United States v. Western Elec., 673 F. Supp. 525, 564 (D.D.C. 1987) (cable TV companies "do depend on permission from the Regional Companies for attachment of their cables to the telephone companies' poles and the sharing of their conduit space. . . . In short, there does not exist any meaningful, large-scale alternative to the facilities of the local exchange networks. . . ."); General Telephone Co. of Southwest v. United States, 449 F.2d 846, 851 (5th Cir. 1971) (construction of systems outside of utility poles and ducts is "generally unfeasible").

pricing must be as carefully controlled as is access to the local loop for a competitive access provider. If Bell South believes that such competitive concerns have been entirely misplaced, it should address its concerns to Congress, not to an agency which is discharging a Congressionally mandated function.

Second, Bell South contends that the Bureau did not have delegated authority to designate this case for hearing. In a decision released the same day as the Hearing Designation Order, the Commission specifically granted the Bureau the right to resolve similar computational aspects of pole cases by delegation to the ALJ. TCA Management Co. v. Southwestern Public Service, FCC 95-221, PA 90-0002, CC Docket No. 95-84 at ¶30 (released June 15, 1995). This was in full accord with previously adopted Rule 1.1411.⁶ If Bell South's contention is that the specific issues designated in this case were beyond delegation, then it has a fundamental misunderstanding of what is at issue. By regulation, the "default" formula would allow BellSouth to assess a pole rent which included compensation for the administrative expenses in the overhead accounts which were formerly booked in Part 31 accounts classified under "General Office Salaries Expenses" and "Other Operating

⁴ See, e.g., United States v. AT&T, Civ. No. 74-1698, Plaintiffs' First Statement of Contentions and Proof (D.D.C., filed Nov. 1, 1978) (Justice Department's cataloguing of BOC dominance of pole and conduit facilities. "The cost of building a separate pole system was prohibitive, and many municipalities simply forbade this alternative.").

⁵ See, e.g., F.C.C. v. Florida Power Corp., 480 U.S. 245, 247 (1987) ("In most instances underground installation of the necessary cables is impossible or impracticable. Utility company poles provide, under such circumstances, virtually the only practical physical medium for the installation of television cables.").

⁶ "The Commission may decide each complaint upon the filings and information before it, may require one or more informational meetings with the parties to clarify the issues or to consider settlement of the dispute, or may, in its discretion, order evidentiary procedures upon any issues it finds to have been raised by the filings." 47 C.F.R. § 1.1411.

Expenses". See Attachment A. When LEC accounting was moved from Part 31 to Part 32, most LECs nationally had no trouble making the conversion, and typically used Accts 6711-6728, which are classified under "Executive & Planning" and "General & Administration". See Attachment A. To let all LEC's know the proper conversion, the undersigned asked the Accounting & Audits Division to formally announce a conversion table, which was done and published in FCC Record. Not one party sought reconsideration or review.

Third, Bell South claims that the Bureau cannot resolve what it deems "novel" questions in this case, and/or that they may only be resolved through rulemaking. This is contrary to settled law. The formula adopted by the Commission is supposed to be sufficiently flexible so that parties may have specific circumstances accounted for in specific cases. Thus, for example, it is usually presumed that the standard pole is 37.5 feet and contains 13.5 feet of usable space. But this may be rebutted by utilities who chose to submit a useable space study of their own plant to the Bureau. Similarly, utilities which believe that their incremental costs are greater than the FCC formula may make that demonstration to the Bureau.⁷ None of those cases require Commission adjudication or rulemaking merely because the computations involved depart from the default figure.

In this case, the Bureau has noted that some elements of three expense accounts proffered by Bell South may also be recovered in pole rents if Bell South can demonstrate how much, if any, of Bell South's expenses actually booked in those account would have been booked in Part 31 accounts adopted in the FCC's rulemaking. The Bureau

⁷ See, e.g., Williamsburg Cablevision v. Carolina Power & Light, 52 R.R.2d 1697 (1983); Booth American Co. v. General Tel. Co. of Florida, PA 82-0067, Mimeo 5581 (Aug. 2, 1983); Tele-Ception of Winchester, Inc. v. Kentucky Utilities, 49 R.R.2d 1572 (1981); Georgia Power Co. v. Columbus Cablevision, PA 80-0022, Mimeo 34420 (March 20, 1984).

could very well have decided, as in prior cases, that Bell South had already missed its chance to make such a showing when it chose to argue for inclusion of the entire accounts without reference to what expenses were booked in them.⁸ As an act of regulatory generosity, the Bureau has provided Bell South with another chance to make that showing by tracking expenses. This does not, as suggested by Bell South, require Bell South to convert the RBOC back to Part 31 accounting. Nor is it predicated on a mistaken "fact" or assumption about Bell South's tracking of expenses. Bell South knows better. The HDO offers a standard of evidentiary presentation to which Bell South should aspire in this case before the ALJ if it wants *more* than the default rate. If Bell South cannot meet the burden, so be it. But this is not a *reduction* in pole rents. It is an opportunity to earn more than the standard formula would otherwise allow. For Bell South to claim that the Bureau does not have the

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In Teleprompter of Fairmont the Commission rejected a Petition for Reconsideration containing new data which could have been filed in an update but which was strategically withheld:

"C&P apparently expected another opportunity to present information on its annual carrying charges. The telephone company contends that we erred in estimating carrying charges without requesting additional information as contemplated by Section 1.1409(a) of the Rules, 47 C.F.R. § 1.1409(a), or ordering a hearing. We cannot agree. Section 1.1409(a) gives us discretion to request additional information; the same section also permits us to make estimates when a party fails to provide information. Congress directed the Commission to establish a simple and expeditious procedure for pole attachment proceedings. See S. Rep. 95-580, 95th Cong., 1st Sess. 21 (1978). Our rules reflect Congressional intent. Thus, each party is responsible for submitting the appropriate data; it declines to file information at its own risk, for we will estimate and calculate values when necessary to avoid counterproductive delay and to carry out the intent of Congress. Except in unusual circumstances, we expect to resolve the issues using facts provided in the authorized filings. Here, no such unusual circumstances are shown. ...

C&P now offers a full explanation of its method of calculating annual carrying charges. Absent, however, is any showing that its method, explained in considerable detail in its petition, depends on newly discovered evidence. Nor is there any explanation as to why C&P could not have provided information on its methods during the pleading cycle or during the pendency of the case. As provided by Commission Rules, we will not consider the new evidence in ruling on this petition for reconsideration. Section 1.106(c), 47 C.F.R. § 1.106(c)."

authority to resolve such discrete accounting issues by offering Bell South an undeserved second chance is preposterous.

Bell South's blanket suggestion that all of the expenses it books in Accts 6124, 6535, 6411, and 6534 would have been included in the Part 31 accounts approved by the Commission is utterly lacking in evidentiary support and is contrary to the A&A Letter.

The Application for Review should be denied.

Respectfully submitted,
**UACC Midwest, Inc. d/b/a United Artists
Cable Mississippi Gulf Coast
Telecable Associates, Incorporated
Vicksburg Video
Mississippi Cablevision, Inc.
Mississippi Cable Television Association**

By: 

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Its Attorney

July 31, 1995

ATTACHMENT A

Part 31

General Office Salaries & Expenses

Accts 661-665

Other Operating Expenses

Accts 668-677

Part 32

Executive & Planning

Accts 6711-6712

General & Administration

Accts 6721-6728

BellSouth Telecommunications

AREA: All

PERIOD: From Jan 1994 To Dec 1994

REPORT: BSTR

Approved by OMB

3060-0395

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Unrestricted Version

SUBMISSION 1

TABLE I-1-2

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TABLE I-1 - INCOME STATEMENT ACCOUNTS
(Dollars in Thousands)

ROW/ ACCT. No.	Account Title (aa)	Total (ab)	Salaries and Wages (ac)	Benefits (ad)	Rents (ae)	Other Expenses (af)
EXPENSE ACCOUNTS						

Plant Specific Operations						

6112	Motor vehicle	186,576	34,481	11,397	33,874	106,824
610	Clearance - Motor vehicle	172,080	32,405	10,654	31,781	97,240
615	Net Balance - Motor vehicle	14,496	2,076	743	2,093	9,584
6113	Aircraft	4,697	2,272	473	34	1,918
620	Clearance - Aircraft	0	0	0	0	0
625	Net Balance - Aircraft	4,697	2,272	473	34	1,918
6114	Special purpose vehicle	5	0	0	2	3
630	Clearance - Special purpose vehicle	0	0	0	0	0
635	Net Balance - Special purpose vehicle	5	0	0	2	3
6115	Garage work equipment	990	123	52	0	815
6116	Other work equipment	45,802	3,103	1,226	511	40,962
640	Clearance - Other work equipment	42,770	2,557	934	445	38,834
645	Net Balance - Other work equipment	3,032	546	292	66	2,128
6110	Network support	23,220	5,017	1,560	2,195	14,448
6121	Land & building	293,217	16,470	5,483	76,472	194,792
6122	Furniture & artworks	35,810	36	8	79	35,687
6123	Office equipment	27,419	2,247	639	13,252	11,281
6124	General purpose computers	315,227	97,980	30,264	48,037	138,946
6120	General support	671,673	116,733	36,394	137,840	380,706
6211	Analog electronic	100,801	47,011	14,917	237	38,636
6212	Digital electronic	386,205	127,970	39,328	578	218,329
6215	Electro-mechanical	0	0	0	0	0
6210	Central Office-switching	487,006	174,981	54,245	815	256,965
6220	Operator systems	9,566	277	75	1,539	7,675
6231	Radio systems	2,992	1,182	338	757	715
6232	Circuit equipment	197,968	109,288	32,476	1,412	54,792
6230	Central office-transmission	200,960	110,470	32,814	2,169	55,507

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Account Title (aa)	Total (ab)	Salaries and Wages (ac)	Benefits (ad)	Rents (ae)	Other Expenses (af)
6311 Station apparatus	3,284	2,331	642	31	280
6341 Large PBX	1,732	338	100	3	1,291
6351 Public telephone terminal equipment	52,206	15,665	4,642	177	31,722
6362 Other terminal equipment	229,429	144,723	40,883	2,255	41,568
6310 Information origination/termination expense	286,651	163,057	46,267	2,466	74,861
6411 Poles	71,419	2,271	666	58,534	9,948
6421 Aerial cable	337,011	219,596	62,947	3,102	51,366
6422 Underground cable	63,720	35,680	10,455	1,051	16,534
6423 Buried cable	521,501	295,532	86,018	4,671	135,280
6424 Submarine cable	117	7	2	0	108
6425 Deep sea cable	0	0	0	0	0
6426 Intrabuilding network cable	4,995	2,987	841	51	1,116
6431 Aerial wire	0	0	0	0	0
6441 Conduit systems	9,707	463	128	482	8,634
6410 Cable and wire	1,008,470	556,536	161,057	67,891	222,986
650 Total Plant Specific Operations	2,687,546	1,127,071	332,412	214,915	1,013,148

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Account Title (aa)	Total (ab)	Salaries and Wages (ac)	Benefits (ad)	Rents (ae)	Other Expenses (af)
Plant Nonspecific Operations					
6511 PHFTU	5	0	0	N/A	5
6512 Provisioning	94,108	38,914	12,705	N/A	42,489
660 Clearance - Provisioning	86,733	38,802	12,709	N/A	35,222
665 Net Balance - Provisioning	7,375	112	(4)	N/A	7,267
6510 Other property plant and equipment expense	7,380	112	(4)	N/A	7,272
6521 Power	43,382	0	0	N/A	43,382
6522 Network administration	91,084	65,806	20,607	N/A	4,671
6523 Testing	265,605	191,378	61,289	N/A	12,938
6524 Plant operations administration	354,700	229,683	79,562	N/A	45,455
670 Clearance - Plant operations administration	0	0	0	N/A	0
675 Net Balance - Plant operations administration	354,700	229,683	79,562	N/A	45,455
6525 Engineering	276,080	172,408	53,733	N/A	49,939
680 Clearance - Engineering	0	0	0	N/A	0
685 Net Balance - Engineering	276,080	172,408	53,733	N/A	49,939
6530 Network Operations	1,030,851	659,275	215,191	N/A	156,385
6540 Access	56,642	0	0	N/A	56,642
6561 Depreciation-TPIS	2,901,559	N/A	N/A	N/A	2,901,559
6562 Depreciation-PHFTU	3	N/A	N/A	N/A	3
6563 Amortization-tangible	21,025	N/A	N/A	N/A	21,025
6564 Amortization-intangible	234	N/A	N/A	N/A	234
6565 Amortization-other	17,459	N/A	N/A	N/A	17,459
6560 Depreciation & Amortization Expense	2,940,280	N/A	N/A	N/A	2,940,280
690 Total Plant Nonspecific Operations	4,035,153	659,387	215,187	N/A	3,160,579

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Account Title (aa)	Total (ab)	Salaries and Wages (ac)	Benefits (ad)	Rents (ae)	Other Expenses (af)
Customer Operations					
6611 Product management	110,756	39,970	9,528	N/A	61,258
6612 Sales	310,934	20,346	5,988	N/A	284,600
6613 Product advertising	65,806	1,569	303	N/A	63,934
6610 Marketing Expense	487,496	61,885	15,819	N/A	409,792
6621 Call completion	80,284	58,823	17,641	N/A	3,820
6622 Number services	205,750	146,925	48,724	N/A	10,101
6623 Customer services	945,376	474,024	157,937	N/A	313,415
6620 Service Expense	1,231,410	679,772	224,302	N/A	327,336
700 Total Customer Operations	1,718,906	741,657	240,121	N/A	737,128
Corporate Operations					
6711 Executive	30,357	14,097	1,755	N/A	14,505
6712 Planning	15,378	5,368	1,169	N/A	8,841
6710 Executive and Planning	45,735	19,465	2,924	N/A	23,346
6721 Accounting & finance	136,521	65,339	19,140	N/A	52,042
6722 External relations	100,440	50,987	13,806	N/A	35,647
6723 Human resources	138,264	79,838	16,554	N/A	41,872
6724 Information management	394,728	88,656	19,143	N/A	286,929
6725 Legal	51,350	14,814	3,686	N/A	32,850
6726 Procurement	36,667	22,079	5,243	N/A	9,345
6727 Research and development	33,310	10,313	2,201	N/A	20,796
6728 Other general and administrative	262,090	64,976	20,068	N/A	177,046
6720 General & Administrative	1,153,370	397,002	99,841	N/A	656,527

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TABLE I-1 - INCOME STATEMENT ACCOUNTS
(Dollars in Thousands)

Account Title (aa)	Total (ab)	Salaries and Wages (ac)	Benefits (ad)	Rents (ae)	Other Expenses (af)
6790 Provision for uncollectible notes	80	N/A	N/A	N/A	80
710 Total Corporate Operations Expense	1,199,185	416,467	102,765	N/A	679,953
720 Total Operating Expenses	9,640,790	2,944,582	890,485	214,915	5,590,808
730 Net Operating Revenue	3,956,027	N/A	N/A	N/A	N/A

CERTIFICATE OF SERVICE

I, Marlene E. Presley, a legal assistant with the law firm of Cole, Raywid & Braverman, do hereby certify that a copy of the foregoing was sent via first-class, postage pre-paid, United States mail. this 31st day of July. 1995, to the following:


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Federal Communications Commission
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